

**zSENATE COMMERCE COMMITTEE AMENDMENT**

**AMENDMENT NO.** \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 3192**

**House Bill No. 3201**

by deleting everything which follows the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 47-18-301 (3)(A), is amended by deleting the subsection in its entirety and substituting instead the following language:

(A) "Health club" means any enterprise, however styled, which offers on a regular, full-time basis, and pursuant to a health club agreement, services or facilities for the development of preservation of physical fitness through exercise, weight control or athletics.

SECTION 2. Tennessee Code Annotated, Section 47-18-301(4), is amended by deleting this section in its entirety and by substituting instead the following: "Health club agreement" means an agreement whereby a buyer purchases, or is obligated to purchase, any right to use health club facilities or services; and such services or facilities are for personal, family, employee, or household use; and

SECTION 3. Tennessee Code Annotated, Section 47-18-303(2), is amended by deleting the word "and" and substituting instead the words "or fails to".

SECTION 4. Tennessee Code Annotated, Section 47-18-305, is amended by adding the following language as new subsections to be designated as (c) and (d):

(c) It shall be unlawful for a health club to offer any cash or discounted pre-payment option that exceeds a reduction of the cash value of the highest stated price for any similar period or service-type of agreement:

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(1) by an excess of ten percent (10%) for any term less than two

(2) years duration;

(2) by an excess of fourteen percent (14%) for any term of two (2)

years duration, but less than three (3) years duration; or

(3) by an excess of eighteen percent (18%) for any term of three

(3) years duration.

(d) It shall be unlawful for a health club to offer free or no cost periods of

enrollment in addition to the initial paid term of the agreement in order to

circumvent the discounting provision of subsection (c).

SECTION 5. Tennessee Code Annotated, Section 47-18-305(a)(5)(B)(iii), is

amended by deleting the punctuation "." following the word "agreement" and substituting

instead the following:

, AND, IN THE CASE OF INSTALLMENT PAYMENTS WHICH ARE NOT MADE  
BY ELECTRONIC FUND TRANSFER OR CASH, AN ADMINISTRATIVE  
CHARGE, NOT TO EXCEED FIVE DOLLARS (\$5.00) FOR EACH BILLING  
PERIOD.

SECTION 6. Tennessee Code Annotated, Section 47-18-305(a)(5)(B)(iv), is

amended by deleting the original subsection in its entirety and substituting the following

language:

(iv) THERE ARE NO AUTOMATIC OR LIFETIME RENEWALS OF THE

TERM INCIDENT TO THE TERM OF THIS CONTRACT. IF THE HEALTH CLUB

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PROVIDES FOR A RENEWAL OPTION, SUCH OPTION MUST BE AFFIRMATIVELY AGREED TO IN WRITING BY THE BUYER AT THE BEGINNING OF THE RENEWAL PERIOD. IF THE HEALTH CLUB FACILITY IS LESS THAN OR EQUAL TO TEN THOUSAND (10,000) SQUARE FEET (GROSS) OF BUILDING SPACE, THEN THE ANNUAL COST OF SUCH RENEWAL SHALL NOT BE LESS THAN THIRTY PERCENT (30%) OF THE ANNUALIZED COST OF THE BASE MEMBERSHIP CONTRACT OR SEVENTY-FIVE DOLLARS (\$75), WHICHEVER IS GREATER. HOWEVER, IF THE HEALTH CLUB FACILITY IS GREATER THAN TEN THOUSAND (10,000) SQUARE FEET (GROSS) OF BUILDING SPACE, THEN THE ANNUAL COST OF SUCH RENEWAL SHALL NOT BE LESS THAN THIRTY PERCENT (30%) OF THE ANNUALIZED COST OF THE BASE MEMBERSHIP CONTRACT OR ONE HUNDRED TWENTY- FIVE DOLLARS (\$125), WHICHEVER IS GREATER. PAYMENT OF ANY RENEWAL SHALL BE MADE AS REQUIRED BY TENNESSEE CODE ANNOTATED, SECTION 47-18-305(A)(5)(B)(ii).

SECTION 7. Tennessee Code Annotated, Section 47-18-305(a)(5)(B), is amended by adding the following language as new subsections to be designated as (v) and (vi):

(v) A CONTRACT OR AGREEMENT MAY HAVE A CONTINUING PROVISION OR STIPULATION THAT PROVIDES FOR A MONTH TO MONTH CONTINUATION OF THE INITIAL TERM OF THE AGREEMENT PROVIDED

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THE BUYER HAS THE RIGHT TO CANCEL THE CONTINUING PORTION OF THE AGREEMENT AFTER FULFILLING THE ORIGINAL TERM OF THE AGREEMENT BY TENDERING THIRTY (30) DAYS WRITTEN NOTICE OF SUCH INTENT TO THE OPERATOR BY REGISTERED MAIL. IF SUCH CONTRACTUAL OBLIGATION HAS A CONTINUING PROVISION OR STIPULATION, NOTIFICATION MUST BE SENT BY THE HEALTH CLUB OPERATOR TO CONFIRM THAT THE ORIGINAL OBLIGATION WAS FULFILLED AND TO REAFFIRM THE MONTH TO MONTH OR CONTINUING PROVISION OR STIPULATION. SUCH NOTIFICATION SHALL ALSO INCLUDE NOTICE OF THE BUYER'S RIGHT TO CANCEL THE CONTINUING MONTH-TO-MONTH OBLIGATION UPON THIRTY (30) DAYS' WRITTEN NOTICE SENT BY THE BUYER TO THE OPERATOR BY REGISTERED MAIL.

(vi) ANY RENEWAL RIGHT GRANTED UNDER THIS CONTRACT SHALL EXPIRE ON THE FINAL DAY OF THE AGREEMENT. HOWEVER, THE BUYER SHALL HAVE A THIRTY (30) DAY GRACE PERIOD FROM THE DATE OF THE EXPIRATION OF THE RENEWAL RIGHT IN WHICH TO EXERCISE ANY RENEWAL RIGHT GRANTED TO THE BUYER UNDER THIS CONTRACT. THE OPERATOR SHALL HAVE THE RIGHT TO CHARGE A LATE PENALTY OF UP TO \$25 IF THE RENEWAL RIGHTS ARE NOT EXERCISED ON OR BEFORE THE EXPIRATION DATE AS STIPULATED IN THE AGREEMENT OR ANY FUTURE RENEWAL PERIODS.

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SECTION 8. Tennessee Code Annotated, Section 47-18-305(b), is amended by deleting the original subsection in its entirety and substituting the following language:

(b) A health club shall not enter into or offer to enter into a health club agreement unless the health club is fully operational and available to use by prospective buyers. The division shall, upon application by a health club operator, certify that a health club facility is fully operational if all of the promised equipment and services are available for use by prospective buyers. No payment or promise to pay by a prospective buyer may be accepted by any health club operator unless and until the health club facility has been certified by the division to be fully operational as described herein. This subsection shall not apply to any health club that has maintained a satisfactory registration with the division for five (5) consecutive years, provided, however, such health clubs notify the division by certified mail of their intent to enter into agreements for a location not fully operational as otherwise required by this subsection. In order to be eligible to use this exemption, an operator must use the same identification as described in any existing facility registration information as well as use the same federal and state tax accounts for payments of any related taxes due to this extension of operations.

SECTION 9. Tennessee Code Annotated, Section 47-18-306(a), is amended by deleting the original subsection in its entirety and substituting the following language:

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(a) Unless the buyer is granted a right to cancel the health club agreement as provided in subsection (b) of this section, no buyer shall be bound by any health club agreement with a stated initial term greater than thirty-six (36) months.

SECTION 10. Tennessee Code Annotated, Section 47-18-306(b), is amended by deleting the original subsection in its entirety and substituting the following language:

(b) A health club agreement may include a provision or stipulation that provides for a month-to-month continuation of the agreement, either as an initial agreement between the operator and the buyer or as an extension of an agreement beyond a stated term or duration; provided, however, the buyer has the right to cancel the continuing portion of the agreement by providing the health club operator thirty (30) days written notice by registered mail of the buyer's intent to cancel the agreement.

SECTION 11. Tennessee Code Annotated, Section 47-18-309, is amended by adding the following language as a new subsection to be designated as (c):

(c) No health club operator shall accept payment or a promise to pay pursuant to any health club agreement or pursuant to any subsequent amendment to an existing health club agreement until a copy of the health club agreement or the amendment thereto has been filed with and accepted by the division as being in compliance with the provisions of this chapter. A health club agreement or amendment shall be deemed accepted for use unless the division

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furnishes the health club operator written notice of rejection of the agreement or amendment within forty-five (45) days of the date of filing with the division.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall take effect on January 1, 1997, the public welfare requiring it.